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Protracted conflicts in the GUAM area and their implications for international peace, security and development

Security Council
Seventy-first year

Identical letters dated 2 June 2016 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit herewith the statement of the delegation of Georgia (see annex) in response to the letters circulated by the Permanent Mission of the Russian Federation to the United Nations on 11 May 2016 (A/70/869 and A/70/870).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda item 35, and of the Security Council.

(*Signed*) Kaha Imnadze
Permanent Representative

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Annex to the identical letters dated 2 June 2016 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

Statement of the Delegation of Georgia in response to the letters circulated by the Permanent Mission of the Russian Federation on 11 May 2016

On 11 May 2016, at the request of the Russian Federation two documents (A/70/869 and A/70/870) were circulated at the UN General Assembly which contained the so-called "appeals" of the "Ministry of Foreign Affairs of Abkhazia" and the 'Ministry of Foreign Affairs of the Republic of South Ossetia" with a declared goal of tarnishing Georgia's reputation and undermining her sovereignty and territorial integrity. Replete with erroneous statements and false figures to fabricate history, these letters contradict the purposes and principles of the United Nations, are counterfactual and do not befit the eminent status of permanent member of the UN Security Council with a primary responsibility for maintaining international peace and security.

* * *

The purpose of this letter is to expose the fallacy of the preposterous statements and vitriolic accusations contained in the Russian letters by presenting fact-based arguments on the nature of the Russo-Georgian conflict and its various dimensions, and by providing references to reputable international sources.

We would like to state upfront that the so-called "Republic of Abkhazia" and "Republic of South Ossetia" are nothing more than Russia's occupation regimes in north-western and central parts of Georgia which constitutes 20 percent of Georgia's sovereign territory. Russia illegally maintains tens of thousands of troops, armaments and military bases in those areas which have been depopulated as a result of ethnic cleansing, deportation and other forms of mass atrocities against the majority population.

The occupying power exercising authoritarian control over Georgia's two regions has no regard for the lives or future of the people living on either side of the occupation line. By erecting fortifications and razor-wire fences, the Russian Federation is dividing families, hindering human-to-human interaction and stymying freedom of travel, the right to education and healthcare in the tightly-knit communities where intermarriage and ethnic diversity have been a fact of life for centuries.

Russia's illegal military presence in the occupied territories is the number one reason why hundreds of thousands of Georgian IDPs and refugees cannot return to their homes and why Georgian citizens living in the occupied territories cannot fully enjoy the freedoms and rights, including the freedom of movement and the right to education and healthcare, as well as other public services provided by the Georgian State. Like "black holes"[1] — in the words of Ms. Navi Pillay, former UN High Commissioner for Human Rights — the Russian-occupied Georgian regions are

[1] Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference in Tbilisi, Georgia, 21 May 2014; retrieved from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624&LangID=E.

engulfed with crime, corruption and backwardness. A detailed account of mass human rights violations are given in the Quarterly Reports of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia.[2]

The severity of the human rights and humanitarian situation in the occupied territories has been once again exposed by a brutal murder of an unarmed Georgian citizen, Giga Otkhozoria, in the village of Khurcha, close to the Nabakevi Crossing Point at the occupation line, on 19 May 2016. Committed by so-called "border guards", this criminal act once again demonstrates the highly alarming situation in the occupied Abkhazia region of Georgia, and the full responsibility for it lies with the Russian Federation exercising effective control over the territory. This inhumane killing reconfirms the urgent need of establishing international security and human rights monitoring mechanisms in the occupied Georgian regions.

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The ill-concealed goal of the Russian letters is to politicize the question related to the rights of the forcibly displaced persons by linking it to the political agenda of the occupying force. In sharp contrast, the text of the annual UN General Assembly humanitarian resolution on the "Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia" has been consciously stripped off political content and finger-pointing and, instead, has been based on the universally recognized principles, cemented in numerous international documents, such as "Guiding Principles on Internal Displacement" and the UN General Assembly Resolution on "Protection of and assistance to internally displaced persons."

In this part of our letter, we will refer to some of the important international documents regarding Georgia's sovereignty and territorial integrity and the ethnic cleansing against Georgians and other forms of crime committed in the occupied territories, as well as the political and humanitarian aspects of the Russo-Georgian conflict that have been addressed by the United Nations Security Council, the OSCE, the EU, and the International Criminal Court.

The United Nations

The United Nations Security Council was actively engaged with Georgia from 1993 to 2009 — until the Russian Federation brazenly used its veto power to block the United Nations Observer Mission in Georgia (UNOMIG). For 16 years, the UN Security Council unanimously reaffirmed "the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders" and stressed the necessity "to address seriously

[2] First, Second, Third and Fourth Quarterly Reports of the Ministry of Foreign Affairs of Georgia on the Human Rights Situation in the Occupied Regions of Georgia, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/421 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/608 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/982 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/161.

the need for a dignified return of IDPs and refugees, including their security and human rights concerns".[3]

In its Resolution 876 (1993), the Security Council affirms the sovereignty and territorial integrity of Georgia and the right of refugees and displaced persons to return to their homes and expresses its deep concern "at the human suffering caused by conflict in the region, and at reports of 'ethnic cleansing' and other serious violations of international humanitarian law".[4]

UNSC Resolution 993 (1995) reaffirms "the right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement on voluntary return of refugees and displaced persons (S/1994/397, annex II), signed in Moscow on 4 April 1994, "deploring the continued obstruction of such return" by [the so-called] 'Abkhaz authorities' and underlining that return of refugees and displaced persons to the Gali region would be a welcome first step".[5]

UNSC Resolution 1187 (1998) "expresses its deep concern at the significant outflow of refugees resulting from the recent hostilities, reaffirms the right of all refugees and displaced persons to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on the voluntary return of refugees and displaced persons (S/1994/397, annex II), calls upon both sides to fulfil their obligations in this regard, and demands in particular that the Abkhaz side allow the unconditional and immediate return of all persons displaced since the resumption of hostilities in May 1998".[6]

These are just several provisions of more than 80 UN Security Council resolutions, presidential statements and communiques adopted in 16 years between 1992 and 2009 that speak loudly to the political and humanitarian aspects of the conflict, including the sovereignty and territorial integrity of Georgia and the inalienable right of all displaced persons to return to their homes. For instance, the Security Council in its Resolution 896 (1994) called "upon all concerned to respect the sovereignty and territorial integrity of the Republic of Georgia, and" stressed "the importance it attached to such respect".[7] In the same resolution, the Security Council recognized "the grave situation in the Republic of Georgia created by the presence of almost 300,000 persons displaced from Abkhazia" and condemned "any attempts to change the demographic composition of Abkhazia, Republic of Georgia, including by repopulating it with persons not previously resident there."

Not only did the Russian Federation do nothing to facilitate the return of IDPs and refugees, it created two dangerous precedents in the history of UN peacekeeping by vetoing the extension of the UN Mission, after the August 2008 war, when it was needed most; and by turning itself from a peacekeeping force into

[3] UN Security Council Resolutions on Georgia, including, for instance, Resolution 1716 (2006), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1716%20(2006).

[4] UNSC Resolution 876 (1993), available at http://www.un.org/fr/sc/repertoire/93-95/CHAPTER%208/EUROPE/item_8_Georgia.pdf.

[5] UNSC Resolution 993 (1995), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/993(1995).

[6] UNSC Resolution 1187 (1998), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1187%20(1998).

[7] UNSC Resolution 896 (1994), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/896(1994).

an occupational force after refusing to withdraw from Georgia against the will of the host nation and staying up to date on Georgian soil without any international mandate.

We should recall that on 25 January 1994 the UN Secretary-General submitted a report to the Security Council on the situation in Abkhazia, Georgia. The report laid out two options for a peacekeeping force. Under Option 1, the Council could establish a traditional United Nations peacekeeping force, under United Nations command and control. With the insistence of the Russian Federation, the regional model under Option 2 was chosen, which called for the creation of "a multinational military force, not under UN command and consisting of contingents made available by interested Member States, including the Russian Federation."[8] Under this option, the Security Council entrusted UNOMIG with "monitoring the multinational force".

Unfortunately, the genuine multinational force was never established. As throughout the 1990's and early 2000s, it became all too obvious that the Russian Federation was party to the conflict, the Commonwealth of Independent States (CIS) peacekeeping force, consisting exclusively of Russian military personnel, violated all acceptable principles of peacekeeping outlined by the Secretary-General's report. The report required that a regional force have "respect for sovereignty and territorial integrity of Georgia; consent of the parties; impartiality; multinational character; a clear mandate; transparency; an integral link to a political process for resolution of the conflict; and a plan for orderly withdrawal."[9] The Russian peacekeeping force was in serious material breach of all of these requirements. Although Russia voted for UN Security Council resolutions reaffirming Georgia's territorial integrity, it challenged Georgian sovereignty by offering political and military support to the so-called "Abkhaz authorities" and by illegally granting Russian passports to residents of Abkhazia.[10]

The Russian government's coercive measures against Georgia undermined its claim to impartiality. In 2006, Russia cut transportation and postal links with Georgia, deported hundreds of Georgian nationals,[11] banned the import of Georgian mineral water, wines and other goods, and influenced the increased price of gas deliveries to Georgia. These hostile acts cast serious doubt on the Russian government's claim of impartiality in the so-called "Abkhazia conflict". Furthermore, the Russian-led operation did not ensure the orderly and dignified return of IDPs and, in fact, yielded no positive results at all.

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[8] United Nations Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, S/1994/80 (January 25, 1994), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S199480.pdf.

[9] United Nations Security Council, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, S/1994/80 (January 25, 1994), available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20S199480.pdf.

[10] Parliament of Georgia, *Some Facts of Russian Policy Towards Georgia*, available at http://www.parliament.ge/index.php?lang_id=GEO&sec_id=63&info_id=13323.

[11] In 2014 the European Court of Human Rights ruled that Russia had violated a number of articles of the European Convention in 2006. The ECHR found that in the autumn of 2006, a coordinated policy of arresting, detaining and expelling Georgian nationals had been followed by the Russian authorities, violating international law that bars the "collective expulsion of aliens" and "inhuman and degrading treatment." ECHR 196 (2014); 03.07.2014, retrieved from http://hudoc.echr.coe.int/eng-press?i=003-4811514-5865358#{"itemid":["003-4811514-5865358"]}.

The Organization for Security and Co-operation in Europe (OSCE)

The OSCE was engaged in Georgia through the OSCE Mission from 1992 to 2009. The Mission had to stop its activities after Russia broke the consensus on extension of the OSCE mandate at the end of 2008.

In 1994, the CSCE participating States, including the Russian Federation, adopted an outcome document of the Budapest Summit in which they "... reiterated their strong support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders". Furthermore, the Heads of States "...expressed their deep concern over "ethnic cleansing", the massive expulsion of people, predominantly Georgian, from their living areas and the deaths of large numbers of innocent civilians".

The OSCE Heads of State, including the Russian Federation, stated in the Outcome Document of the 1996 Lisbon Summit: "We reaffirm our utmost support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders. We condemn the 'ethnic cleansing' resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia. Destructive acts of separatists, including obstruction of the return of refugees and displaced persons and the decision to hold elections in Abkhazia and in the Tskhinvali region/South Ossetia, undermine the positive efforts undertaken to promote political settlement of these conflicts. We are convinced that the international community, in particular the United Nations and the OSCE with participation of the Russian Federation as a facilitator, should continue to contribute actively to the search for a peaceful settlement."

The OSCE Heads of State, including the Russian Federation, declared in the Outcome Document of the 1999 Istanbul Summit: "We reiterate our strong condemnation as formulated in the Budapest and Lisbon Summit Documents, of the "ethnic cleansing" resulting in mass destruction and forcible expulsion of predominantly Georgian population in Abkhazia, Georgia". At this Summit, the Russian Federation also took a legally binding commitment to withdraw all its military bases and personnel from Georgia, in breach of which it remains to this date.

The EU-commissioned Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG)

By its decision of 2 December 2008 the Council of the European Union established an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG) that was chaired by Ambassador Heidi Tagliavini, a Swiss diplomat. This was the first time in its history that the European Union decided to intervene actively in a serious armed conflict. The IIFFMCG focused its investigation on the Russo-Georgian war of August 2008.

In its report published in September 2009, the IIFFMCG said it "found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia."[12] "Consequently, several elements suggest the conclusion that ethnic cleansing was

[12] Independent International Fact-Finding Mission on the Conflict in Georgia Report (IIFFMCG), Volume I, p. 27.

indeed practiced against ethnic Georgians in South Ossetia both during and after the August 2008 conflict,"[13] in addition to "widespread campaigns of looting and destruction of ethnic Georgian settlements by South Ossetians, as well as ill-treatment, gender-related crime including rape, assault, hostage-taking and arbitrary arrests, together with the failure by Russian forces to prevent and stop violations by South Ossetian forces, armed irregular groups and armed individuals before and after the ceasefire in South Ossetia and the adjacent territories."[14] "The Russian forces failed to prevent these acts and, most importantly, did not stop the looting and pillage after the ceasefire, even in cases where they witnessed it directly."[15] "The Russian authorities and the South Ossetian authorities failed overwhelmingly to take measures to maintain law and order and ensure the protection of the civilian population as required under IHL and HRL."[16]

The IIFFMCG then concluded that "Russia was involved in the conflict in several ways. First, Russian peacekeepers who were stationed in South Ossetia on the basis of the Sochi Agreement were involved in the fighting in Tskhinvali. Second, Russian regular troops were fighting in South Ossetia, Abkhazia and deeper in Georgian territory. Third, North Caucasian irregulars took part in the fighting. Finally, Russia supported Abkhaz and South Ossetian forces in many ways, especially by training, arming, equipping, financing and supporting them."[17]

In regard to Georgia's tireless efforts for years before the August 2008 war to change the negotiating format and replace the Russian "peacekeepers" with impartial international forces, the IIFFMCG observed that "increasing pressure from the parties as well as the changing international environment made the existing peace mechanisms lose their grip on the situation and give way when the events took a critical turn."[18] The Mission goes even farther by saying that "no party to the conflict or party which is considered to be strongly supportive of any of the sides should assume a position of command, or chair, or arbiter nor exercise any other control of an operation which rests on the notion of impartiality and even-handedness in order to be effective."[19]

"More than 35 000 IDPs/refugees are not expected to return to their homes in the foreseeable future", the IIFFMCG said, "owing to the continued insecurity of the situation or to the destruction of their homes and property. It needs to be stressed that both South Ossetia and Abkhazia, together with Russia, must take appropriate measures to ensure that IDPs/refugees including those from the conflicts of the early 1990s [altogether up to 400 000 persons], are able to return to their homes with no conditions imposed other than those laid down in relevant international standards."[20] In this regard, I would add that there is a plethora of evidence suggesting that the entire Georgian villages in the Tskhinvali region have been bulldozed and the Russians are constructing military and other facilities in their place.

[13] Ibid, Volume I, p. 27; Volume II, p. 392.
[14] Ibid, Volume I, p. 27.
[15] Ibid, Volume II, p. 365.
[16] Ibid, Volume II, p. 375.
[17] Ibid, Volume II, p. 263.
[18] Ibid, Volume I, p. 34.
[19] Ibid, Volume I, p. 34.
[20] Ibid, Volume I, p. 27-28.

The IIFFMCG also found that the granting of Russian passports to Georgian citizens in Abkhazia and Tskhinvali was illegal. "The vast majority of purportedly naturalized persons from 'South Ossetia' and Abkhazia are not Russian nationals in terms of international law. Neither Georgia nor any third country need acknowledge such Russian nationality. Consequently, the persons living in 'South Ossetia' and Abkhazia who had first become Georgian citizens after the dissolution of the Soviet Union continue to remain so irrespective of "passportization" policies."[21]

The IIFFMCG further concluded that given Russia's unilateral recognition of Abkhazia and "South Ossetia" as independent states, "established principles of international law such as respect for sovereignty and territorial integrity of states were ignored." The IIFFMCG was especially concerned about the future of Europe's security architecture that Russia has been attempting to overhaul in its entirety. "The political culture of cooperativeness that had developed in Europe since the 1970s, and which was enshrined by CSCE/OSCE landmark documents from the Helsinki Final Act (1975) to the Istanbul Charter for European Security (1999), as well as the relevant documents adopted in the framework of the Council of Europe, has suffered. The threat and use of force have now returned to European politics." In this regard, the Report calls for efforts "to renew awareness of [the OSCE's] importance for European security and cooperation, together with a return to its strict observance and application."[22]

Concerning Russia's claims that the two Georgian provinces had the right to secede from Georgia, the IIFFMCG Report strictly states that "only former constituent republics [of the USSR] such as Georgia but not territorial sub-units such as 'South Ossetia' or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of [the occupied entities] such as Abkhazia and 'South Ossetia' by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle I of the Helsinki Final Act."[23]

As regards Moscow's overt quest for a sphere of interest, the IIFFMCG concluded "political concepts and notions such as privileged spheres of interest or otherwise laying claim to any special rights of interference into the internal or external affairs of other countries are irreconcilable with international law. They are dangerous to international peace and stability and incompatible with friendly relations among States. They should be rejected."[24]

The International Criminal Court (ICC)

In January 2016, following the ICC Prosecutor's request, Pre-Trial Chamber I authorized an investigation of any crime within the jurisdiction of the Court, committed in and around Tskhinvali region/South Ossetia, Georgia, between the 1st of July and the 10th of October, 2008.

[21] Ibid, Volume I, p. 18.
[22] Ibid, Volume I, p. 32.
[23] Ibid, Volume I, p. 17.
[24] Ibid, Volume I, p. 36.

According to the Chamber, "an international armed conflict existed between Georgia and the Russian Federation between 1 July 2008 and 10 October 2008. The existence of such international armed conflict is rather uncontroversial as concerns the period of armed hostilities between Georgian and Russian armed forces between 8 and 12 August 2008 and the period of Russian occupation of parts of Georgian territory, in particular the "buffer zone", until at least 10 October 2008. In addition, the Chamber considers, at this stage, that there is sufficient indication that the Russian Federation exercised overall control over the South Ossetian forces, meaning that also the period before the direct intervention of Russian forces may be seen as an international armed conflict".[25]

The Chamber further notes that the consistent pattern of deliberate killing, beating and threatening civilians, detention, looting properties and systematic destruction of Georgian houses and other acts were committed with a view to forcibly expelling ethnic Georgians from the territory of South Ossetia in furtherance of the overall objective to change the ethnic composition of the territory and sever any remaining links with the other parts of Georgia. The Chamber highlights that "the de facto leadership of South Ossetia reportedly acknowledged some aspects of the policy of expulsion, in particular the deliberate destruction of civilian homes in order to prevent the return of the ethnic Georgian population."[26]

The Chamber also notes that during the 2008 armed conflict, based on the available information, the crimes committed against ethnic Georgians "resulted in 51-113 killings, the destruction of over 5,000 dwellings and the forced displacement of 13,400-18,500 persons constituting, in the estimation of the Prosecutor, a 75% decrease in the ethnically Georgian population in South Ossetia."[27]

* * *

Over the past 25 years the Russian Federation has conducted a systematic policy against the national sovereignty, political independence and territorial integrity of Georgia. The letters distributed by the Russian Delegation to the United Nations constitute an attempt to acquire "legitimacy" for Russia's illegal and illegitimate activities, which we strongly believe will be rejected by the international community.

As a peace-loving nation, Georgia stands ready to settle the conflict with the Russian Federation by exclusively peaceful means, in accordance with relevant international agreements and with full respect for the fundamental principles of international law. To this end, on several occasions, Georgia has committed itself to the unilateral legally binding non-use of force pledge, whereas the Russian Federation continues to be reluctant to reciprocate. The withdrawal of Russia's occupation forces from Georgia would be the most important stage toward a comprehensive settlement of the Russo-Georgian conflict.

As concerns the relations with our compatriots living in the occupied territories, the ethnic Abkhaz and Ossetians are an integral part of our common history and future, despite the current artificial barriers. There is no alternative to the return of the IPDs and refugees to their homes and to the full re-integration of all ethnicities into a vibrant society where human rights and individual freedoms as

[25] ICC Pre-Trial Chamber I Decision #ICC-01/15; 27.01.2016, para. 27.
[26] ICC Pre-Trial Chamber I Decision #ICC-01/15; 27.01.2016, para. 21.
[27] ICC Pre-Trial Chamber I Decision #ICC-01/15; 27.01.2016, para. 54.

well as cultural and linguistic diversity of different communities are the Georgian State's top priorities.

New York, May 31 2016